

**MINUTES**  
**KITTY HAWK TOWN COUNCIL**  
**Monday, June 4, 2012**  
**Kitty Hawk Town Hall, 6:00 PM**

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Proclamation Honoring Eagle Scout Daniel Thompson Spruill
5. Public Comment
6. Consent Agenda:
  - a.) Approval of Minutes. May 7, 2012 Regular Meeting Minutes
  - b.) Revenues and Expenses Report for April
  - c.) Tax Pick Ups and Releases
  - d.) FY 11-12 Budget Amendment #10
  - e.) FY 11-12 Budget Amendment #11
  - f.) FY 11-12 Budget Amendment #12
  - g.) FY 11-12 General Fund to Capital Reserves Transfer #3
7. Items Removed from the Consent Agenda
8. Public Hearing
  - a.) Text Amendment: Proposal to add Section 42-250(c)(35) allowing "bungee trampolines" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions.
  - b.) Conditional Use Permit: Application for a conditional use permit application to establish a bungee trampoline business on the property containing Jimmy's Seafood Buffet at 4117 N. Croatan Highway. The proposal includes one bungee trampoline that would be located near the southeast corner of the property behind the existing parking lot. The proposed bungee trampoline business would be seasonal in nature, operating seven days a week from Memorial Day through Labor Day and on weekends during the "shoulder seasons" beginning in April and ending in October.
9. Return to Regular Session
10. Planning:
  - a.) Call for Public Hearing. Zoning Amendment: Application to rezone a portion of the property at 108 Sibbern Drive from Beach Residential (BR-2) to Beach Commercial (BC-1). Presently, the property is split-zoned: a portion of the property is zoned Beach Residential (BR-2) and the remaining portion is zoned Beach Commercial (BC-1). A public hearing is requested to be scheduled for the July 2, 2012 Town Council meeting.
  - b.) Text Amendment: Proposal to add Section 42-250(c)(34) allowing "pet grooming and boarding facilities" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions. A public hearing is requested to be scheduled for the July 2, 2012 Town Council meeting.

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c.) Conditional Use Permit: Application for a conditional use permit application to renovate the existing buildings on the former Sea Me Grow day care property at 108 W. Sibbern Drive for use as a pet grooming and boarding facility. An attendant would be present on the property 24 hours a day, seven days a week. Outdoor potty and play time for the pets would be monitored by an attendant and occur only between the hours of 9:00 a.m. and 6:00 p.m. A public hearing is requested to be scheduled for the July 2, 2012 Town Council meeting.

11. Unfinished Business

a.) Further Consideration of Request for Beach Access at 4408 Virginia Dare Trail

12. New Business

a.) Appointments to Planning Board, Board of Adjustment, and Recreation Committee

13. Reports or General Comments from Town Manager

a.) Information Concerning Charter Cable Service in other Communities

b.) Receipt of Title to Property at 4109 Virginia Dare Trail

c.) Note of Appreciation from Corolla Fire Department

d.) Proposed FY 12-13 Budget (Filed with Town Clerk and Copies Distributed to Council)

e.) Status of CAMA Grants for E. Kitty Hawk Road and Lillian St.

14. Reports or General Comments from Town Attorney

15. Reports or General Comments from Town Council

16. Public Comment

17. Recess to Monday, June 11, 2012, 9:00 AM for FY 12-13 Budget Workshop

**COUNCIL MEMBERS PRESENT:** Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman, Councilwoman Emilie Klutz and Councilman Richard Reid

**STAFF MEMBERS PRESENT:** Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Finance Officer Mike Eubank, Fire Chief Lowell Spivey, Planning Director Joe Heard, Police Chief David Ward and Public Works Director Willie Midgett

**1. CALL TO ORDER**

Mayor Perry called the meeting to order at 6:00 p.m.

**2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE**

After a moment of silence the Pledge of Allegiance was recited.

**3. APPROVAL OF AGENDA**

**MPT Perry made a motion to approve the agenda as promulgated. Councilman Bateman seconded the motion and it passed unanimously, 5-0.**

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**4. PRESENTATION**

**a.) Proclamation Honoring Eagle Scout Daniel Thompson Spruill** – Mayor Perry read aloud the proclamation honoring Daniel Spruill and congratulated him on his achievement.

**5. PUBLIC COMMENT.** The General Public is invited to address the Town Council on any topic. Please sign up with the Town Clerk before the meeting and when your name is called, come forward and speak into the microphone at the podium. Please limit comments to 3 minutes.

There were no public comments.

**6. CONSENT AGENDA.** Items on the Consent Agenda are considered to be non-controversial, routine in nature or items not requiring a presentation to or discussion by the Town Council in order to consider the item(s). Any item may be removed for discussion by council or by any member of the audience who wants to hear the item presented and discussed.

**a.) Approval of Minutes.** May 7, 2012 Regular Meeting Minutes. *(An affirmative vote for the Consent Agenda will approve these minutes.)*

**b.) Revenues and Expenses Report for April.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

**c.) Tax Pick Ups and Releases.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

**d.) FY 11-12 Budget Amendment #10.** Recognize and appropriate no-match government channel funding for purchase of a computer and software. The amount is \$9,160. *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*

**e.) FY 11-12 Budget Amendment #11.** Recognize and appropriate beach stabilization funding reimbursement monies available from Dare County to local governments. The amount is \$4,007. *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*

**f.) FY 11-12 Budget Amendment #12.** Recognize and appropriate federal/state grant funding for direct town costs for flood damages caused by Hurricane Irene to the town owned Coastal Reserve Building. Total amount is \$5,073. *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*

**g.) FY 11-12 General Fund to Capital Reserves Transfer #3.** Interfunds transfer to Capital Reserve for future fire truck purchase. The amount is \$150,000. *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*

**Councilwoman Klutz moved to approve the consent agenda. MPT Perry seconded and it passed unanimously, 5-0.**

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**7. ITEMS REMOVED FROM THE CONSENT AGENDA**

No items were removed.

**8. PUBLIC HEARING**

**a.) Text Amendment:** Proposal to add Section 42-250(c)(35) allowing “bungee trampolines” as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions.

Attorney Michael announced if anyone intended to speak on this matter they needed to come forward and be sworn.

**MPT Perry made a motion, seconded by Councilman Bateman, to go into public hearing. It passed unanimously, 5-0.**

At this time Clerk Morris administered the oath to: Planning Director Joe Heard, Veelee Donahue, William Donahue, Bill Pope, and Kentwood Turner.

**Heard:** *We are here to discuss a text amendment to add a new section, 42-250(c)(35), to allow bungee trampolines as a conditionally permitted use in the BC-1 District. Under the applicant's proposal there would be a number of conditions this type of use would be subject to. Those proposed conditions are: (a) the equipment and operators must comply with all regulations of the North Carolina Department of Labor; (b) the operator must comply with height and weight limitations for the equipment as per manufacturer's instructions; (c) barricades surrounding the use must be properly erected and maintained as set forth by the North Carolina Department of Labor; (d) daily inspection of equipment must be completed and documented by all operators of the equipment; (e) all operators must complete proper training; f) the hours of operation are limited between the hours of 11:00 a.m. to 9:30 p.m.; (g) the operation must comply with all standards of the Kitty Hawk Noise Ordinance; and, (h) the equipment and barricades must be set back a minimum of 25' from adjoining residential property.*

*In the staff report presented to council and made available to the applicant there is information concerning the types of things the council can consider as far as additional issues or conditions. We also provided information about a recently adopted ordinance for the same type of use done by the Town of Kill Devil Hills.*

*The planning board considered this application at its meeting on April 12th and the board voted 4 to 1 to recommend approval of the proposed text amendment to add this subsection as proposed with the additional condition of (h). The bungee trampoline equipment and barricades must be set back at least 25' from the adjoining residential zones. Since the applicant expressed their agreement with that it was included in their proposal. It was something the board came up with. I would be glad to answer any questions at the appropriate time.*

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**Michael:** *If you would like to speak on this matter please come forward and identify yourself.*

**Bill Pope, 4108 Lindbergh Avenue:** *My name is Bill Pope and I am directly behind Jimmy's Buffet at 4108 Lindbergh and I think this should be reconsidered by your planning. This is going to be detrimental to all of us that back up to it. It is becoming an amusement park is basically what it is coming to. They already have a pony that comes in, they have cornhole games, and they have tables for people to sit around and drink their beer while they are waiting to get in. They also have an open container back there that all the garbage and seafood ... it just about asphyxiates everybody around this place.*

*Now you are just going to add that much more and it is going to ruin our property values. I know they are zoned commercial and we are residential where we are but ... and we have had to put a fence up at no cost to them. We had to do it ourselves. We asked if they would go in with this and they said no. But we have had to do that to keep people off of our property and parking their cars on our property. All day we get beer cans, we get the birds going into the trash and dropping all kinds of stuff all over our roofs and everywhere else. All you are going to do is just add to this. I really think you ought to reconsider.*

**Michael:** *Does anybody have any questions of Mr. Pope while he is here?*

**MTP Perry:** *I do. The garbage container is open. There is no lid on it?*

**Pope:** *There is a lid but they do not put the lid down. It is an old container and the lid does not cover everything. The odor is absolutely awful.*

**MPT Perry:** *Okay, thank you.*

**Klutz:** *I have a question that pertains to what you were talking about in regards to the fence. Isn't there supposed to be some sort of a buffer that is 50' between residential and commercial applications of properties?*

**Reid:** *There normally is but I believe that restaurant was there long before we had the buffer requirements.*

**Klutz:** *So it was grandfathered in.*

**Reid:** *I know the restaurant has been there for years and we did not have the buffer requirements until I was on the staff so ...*

**Mayor Perry:** *It was there before you came?*

**Reid:** *The Sportsman's Restaurant, yes.*

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**Klutz:** *Would this be considered a change of use and would that then require a buffer be provided?*

**Heard:** *When the original development of the subject property was approved in 1984 there was a 10' landscaped buffer requirement that was placed along the rear property line. The minutes reflect a 10' landscaped buffer. Presently there is little, if any, vegetation in the buffer area and as mentioned by the speaker the fence that is there was actually constructed by the residents on the other side. It is not on the subject property. It serves as a buffer but it does not belong to the business.*

*As far as whether or not the current non-conformity needs to be brought up it would be something ... if it is operating as a commercial use, under our non-conforming clause, generally that would not be something we would require to be upgraded. I want to point out as part of this there is a text amendment and there is also a conditional use permit. You have the authority, if you feel it is something you want to see, you have the ability to require a buffer as a condition of the conditional use permit should you desire to do so.*

**Mayor Perry:** *Also, about pony riding. Isn't it a requirement that you have a permit to do that? A commercial use of horses is not allowed.*

**Heard:** *A commercial use of horses is not allowed. I am not aware personally that that is still going on. We had informed them of that in years past. That is something I would be glad to look into.*

**Klutz:** *One more question about the amusement activities at the rear of the property. It is considered consistent with the restaurant use. That is where I am getting confused about whether or not there is any kind of change of use for the property that is in ... that is related to the amusement activities that are going on and also the addition of this one if it were to be approved.*

**Heard:** *We have dealt with those as accessory uses to the main use of the restaurant. For instances I could not walk up there if I was not a patron of the restaurant and ... they would not charge me to play golf. It is not a separate, distinct commercial use as the proposed use would be.*

**MPT Perry:** *Back to the garbage can smell and the location in relation to the neighbors. Does the town have any control over that?*

**Heard:** *The town typically approves a dumpster site as part of the site plan. I have the file if it is an important piece of information for you and can look it up.*

**MPT Perry:** *Okay. It is not a part of what we are doing here but I do want you to look into it. Neighbors should not have to smell stuff.*



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**Mayor Perry:** *And the lid should be closed when they are not using it I think.*

**Michael:** *Was there someone else who wanted to speak on this matter? Please come forward and identify yourself.*

**Kentwood Turner, 4104 Lindbergh Avenue:** *My name is Kentwood Turner and I own 4104 Lindbergh Avenue, am a neighbor of Mr. Pope, and I am directly behind Jimmy's Buffet. We did ask for some help on the fence a few years back and we received no help to try to put a buffer between the houses and the business.*

*Our morning starts about 3:00 a.m. with the unloading of trucks. They start with the necessary frozen food trucks at about 3 o'clock and it is pertinent to unloading, slamming doors, using push carts, hollering back and forth. We have about 3 to 4 trucks every morning I think with the exception of Sunday morning. Then in between the 3 o'clock period you get about every other day a dumpster exchange if they are on schedule and they slam that 2 or 3 times to get the left over seafood out that maybe the crows left behind. It is something I feel like we have endured for over 10 years and tried to be good neighbors and not really complain to anybody about it. We have just kind of sucked it up and gone on. If you have small children, which we do not but our cottage sometimes does, there is no way in the world you can hide the noise starting about three in the morning.*

*My part of the fence drew an interest from some of their people over there ... use it as a thoroughfare with automobiles doing donuts and whatever coming across the back parking which is on Lindbergh straight across they come from Jimmy's back to my place right on either side of the house making \_\_\_\_\_. We were getting a lot of traffic through there and of course the later they stay and the better, I guess you would say tab they run up, the better business that night and some of them are pretty loud and having a good time ... try to overlook that but we do encounter quite a bit of loud noise.*

*This bungee jump, from everything I have checked on, you get screaming and hollering and people excited and nervous when they jump. My question would be to each one of you would you want this in the back of your house if you owned where we own? We come down for peace and quietness and the love of the ocean and sometimes it turns out kind of rough. But we tried to be good neighbors, tried to be understanding, but it seems to get out of hand at times.*

*If they want to turn this into a recreational park I believe Foreman's right in front would love to lease, sell, or rent a place over there. They could very well accommodate what they want without us having the expense of losing our privacy while they are entertaining their guests. If the food is not good enough to draw people in then my suggestion would be to improve the food so you do not have to go outside to draw people in.*

*I was hoping tonight they would have a demo to show some of the people how the reactions to bungee jumping would be. I never heard anybody explain how far in the air they were going to*

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*place it but you can imagine some little girl or some kid screaming at the top of their voice when they jump and of course, unfortunately, we get the impact of it. A five and a half foot fence does not catch it all. It catches some of it but it does not catch it all.*

*It appears that if we sit back and try to be a good neighbor we get left out so I would like to appeal to you ladies and gentlemen ... just saying if it were your place and you were coming down to enjoy the beach would it be desirable. We appreciate any consideration. Thank you.*

**Michael:** *Anyone have any questions for Mr. Turner? Thank you Mr. Turner. Was there anyone else who wanted to speak at this public hearing?*

**Margaret Turner:** *My name is Margaret Turner and I am Mr. Turner's wife. My understanding is this goes from 11 o'clock in the day until what time at night? (Someone answered 9:30) This no longer becomes a part of the restaurant because the restaurant is not open those hours. So this, in my estimation, comes under parks and rec. I know that it is done to bring in customers ... if it starts at 11 o'clock in the morning to bring in more revenue and that revenue is no longer a restaurant it is a fun place. That is my feeling. How can they do that if the restaurant hours are from three in the afternoon till nine or nine thirty at night? How can they bring the 11 o'clock in the morning in as part of that restaurant business? Looks like to me it would have to be a separate license. It is not for a restaurant any more but for recreational purposes.*

*There is a pony and we have enjoyed seeing the little kids. I have seen no problems with the pony being there. The girl who brings the pony and walks the pony ... she puts the kids on the pony, leashes them around, and she always has her hand on the child or on the pony. That is no problem. She keeps that area clean and safe and if there are any droppings she gets them up. I cannot complain about it. The miniature golf, still no problem ... the little tots are too small to play golf but they do play and they have a good time.*

*People go in and put their names on a waiting list to get in the restaurant because it is a busy place. They are allowed to go to the bar, buy their drinks, come back out and sit. That is usually when the cornhole starts. That has been something we have never heard the extra noise from but it has been reasonable hours. People start coming in I think to the restaurant about three last year. Quite an early opening and we have never had problems with that.*

*As my husband said we like to be good neighbors. The other thing is we run our air conditioner because as older people we do not enjoy the warm air and breeze like we used to. But there is lots of our family who come down and they do have the windows up and that noise is going to filtrate because we are so close. Like my husband said what kind of noise ... how a kid that is up on ... an adult I do not know who is supposed to ... what ages this is supposed to go but they are having a good time and who ... I would if I were doing that I would probably yell and holler too. And this is just too much from 11 o'clock in the morning to 9:30 at night. I think it is asking too much of the neighbors.*



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*I am not trying to be ... I am trying to be realistic about it and go back to what we have put up with. So far as the dumpster my husband is correct on that. The trucks unloading, he is correct on that and we hear that noise even with all the windows closed and air conditioner on. People climbing our fences ... that now is somewhat of a problem. We are not down here all the time but our neighbor the Pope's are and they see them. They try to control as much of that as they can by going to the kids and telling them but they are not respectful. They just turn around and say, "do you live here, do you own this?" You cannot live and be neighborly when you have those kinds of things coming in play.*

*We definitely do not believe we deserve to have this bungee jumping going from 11 o'clock in the morning to 9:30 at night with the noise. I would appreciate your consideration of all the things we said and I thank you for your time.*

**Michael:** *Anyone have any questions of Mrs. Turner? Thank you. Is there anyone else who wanted to speak at this public hearing?*

**Member of audience:** *I think the rest of our neighbors were asked to send emails to Mr. Heard.*

**Michael:** *There is one that has been received. Anyone else want to speak? That seems to be all the people who have asked to speak at the public hearing.*

**Klutz:** *Do we have to ask that this be made a part of the record?*

**Michael:** *Yes, if you want it to be part of the record.*

**Klutz:** *I do.*

**Michael:** *Do you have a copy Lynn?*

**Morris:** *Yes.*

**Klutz:** *This is the letter from Michele Sargenti.*

**Michael:** *For the record it is an email in opposition to the text amendment. With that said I think that is all.*

**Mayor Perry:** *We will go back into regular session now and take this up.*

**Michael:** *You may want to go ahead and begin your discussion and not close your public hearing yet. If you have any questions you want to ask you can still do that.*

**Klutz:** *I guess what troubled me the most about what is being proposed in terms of the text amendment is the setbacks that are 25'. It appears to me this is something that should be farther*

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*away from a residential property line. The other thing is the Kitty Hawk Land Use Plan is very specific in its opposition to what it refers to as a carnival atmosphere and although an inflatable, which this basically is ... I do not really think falls into that category. If we were to pass this and they started popping up in various places around town I think we might be violating one of the principals of the Land Use Plan. The vision for Kitty Hawk has always been to support a residential atmosphere for the town and I just do not see how this is consistent with what we say in our plan.*

**Bateman:** *I know what these folks are trying to do and it makes sense. You have a wait of thirty-five minutes to an hour and a half and the patrons come and instead of sitting on a bench not doing anything you supply them with things to do: putt putt, golf, riding the horse, bungee jumping, cornhole. Things they can do to keep them occupied and supply a service for them. It makes sense.*

*You had a very good comment Emilie and when I was on the planning board one thing we always addressed was the carnival like atmosphere, the amusement park kind of thing, and I think this opens the door. I hate to say this but I think it opens the door. It will be able to go in other areas and I would hate to see that happen all over Kitty Hawk. I understand why she is trying to do this though and I wish it was not so intrusive and would not be so intrusive on the neighbors. I cannot support it.*

**Reid:** *I guess I should say to begin with I have seen this thing in action. My grandchildren both rode one in Asheville. It was inside a shopping mall and they had a great time. It was great fun. But the bottom line for me is the statements in the staff report that quote the Land Use Plan. It makes it very clear in my mind that this is a carnival ride.*

*Somewhere I thought I read where it said this is for those waiting for dinner but obviously it is not just waiting for dinner. It is a new activity. I assume there is going to be a fee charged.*

*I do not think parking was addressed very well ... three additional spaces particularly when the restaurant is open ... I do see that that is going to be beneficial but bottom line is the Land Use Plan is very clear that this sort of activity, carnival rides, go carts, motor cycles, and it says "but not limited to" so this is definitely a carnival kind of ride and our plan does not allow it. I cannot support a text amendment that would violate the Land Use Plan.*

**MPT Perry:** *We are kind of mixing two things when we are talking about how it is going to be used on this particular piece of property. What we are actually talking about is a text amendment that would allow it anywhere within the town in this particular district. So my objections are going to be based on the Land Use Plan and not wanting a carnival throughout the town. That is already established.*

*I also would have problems with the hours wherever it might be within the town especially going until 9:30 at night. And then the setback is certainly not ... because of the height of it whoever is*

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*in it screaming and whatever. Just the height of the poles tells me you are going to almost double the height when you get up above. So you are going to be voiding any buffers that you might have anywhere in Kitty Hawk.*

*It is a combination of height, buffers, neighborhood intrusion in residential areas, operating hours, and carnival atmosphere. I cannot support it and I am not supporting the text amendment. We have not even gotten to the conditional use part.*

**Mayor Perry:** *I do not support it because of, number one, the Land Use Plan for sure. We have maintained throughout the time I have been here that we have not allowed that kind of activity within the Town of Kitty Hawk. The citizens have always stressed they did not want that type of activity in Kitty Hawk. The parking surely was not addressed. There would have to be a lot more parking during restaurant hours if we were to go there. Have to be buffers put in. Carnival rides, amusement park type atmosphere is certainly not what I have seen approved in Kitty Hawk ... not only to say what their neighbors ... what they are already putting up with so I cannot support it.*

**Michael:** *You are ready for a motion to go back to close the public hearing at this point.*

**Councilman Bateman made a motion to close the public hearing. MPT Perry seconded the motion and it passed unanimously, 5-0.**

**b.) Conditional Use Permit:** Application for a conditional use permit application to establish a bungee trampoline business on the property containing Jimmy's Seafood Buffet at 4117 N. Croatan Highway. The proposal includes one bungee trampoline that would be located near the southeast corner of the property behind the existing parking lot. The proposed bungee trampoline business would be seasonal in nature, operating seven days a week from Memorial Day through Labor Day and on weekends during the "shoulder seasons" beginning in April and ending in October.

**9. RETURN TO REGULAR SESSION**

Council action for public hearing items may include approval, denial, approval with modifications, or tabling action.

**a.) Text Amendment:** Proposal to add Section 42-250(c)(35) allowing "bungee trampolines" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions.

**Councilman Reid moved to deny the proposed text amendment to add Section 42-250(c)35 that would allow bungee trampolines as a conditional use in the BC-1 District. The Town Council finds this amendment is not consistent with the Town's adopted CAMA Land Use**

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**Plan and is not in the public interest. MPT Perry seconded the motion. It passed unanimously, 5-0.**

**b.) Conditional Use Permit:** Application for a conditional use permit application to establish a bungee trampoline business on the property containing Jimmy's Seafood Buffet at 4117 N. Croatan Highway. The proposal includes one bungee trampoline that would be located near the southeast corner of the property behind the existing parking lot. The proposed bungee trampoline business would be seasonal in nature, operating seven days a week from Memorial Day through Labor Day and on weekends during the "shoulder seasons" beginning in April and ending in October.

Attorney Michael announced the public hearing for 8(b), the conditional use permit itself, does not need to be considered because council has denied the text amendment.

**10. PLANNING**

**a.) Call for Public Hearing. Zoning Amendment:** Application to rezone a portion of the property at 108 Sibbern Drive from Beach Residential (BR-2) to Beach Commercial (BC-1). Presently, the property is split-zoned: a portion of the property is zoned Beach Residential (BR-2) and the remaining portion is zoned Beach Commercial (BC-1). A public hearing is requested to be scheduled for the July 2, 2012 Town Council meeting.

**b.) Text Amendment:** Proposal to add Section 42-250(c)(34) allowing "pet grooming and boarding facilities" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions. A public hearing is requested to be scheduled for the July 2, 2012 Town Council meeting.

**c.) Conditional Use Permit:** Application for a conditional use permit application to renovate the existing buildings on the former Sea Me Grow day care property at 108 W. Sibbern Drive for use as a pet grooming and boarding facility. An attendant would be present on the property 24 hours a day, seven days a week. Outdoor potty and play time for the pets would be monitored by an attendant and occur only between the hours of 9:00 a.m. and 6:00 p.m. A public hearing is requested to be scheduled for the July 2, 2012 Town Council meeting.

**Councilman Reid moved that council call for a public hearing for a zoning amendment to rezone a portion of property at 108 Sibbern Dr. from BR-2 to BC-1. Public hearing shall be scheduled for the July 2<sup>nd</sup> Town Council meeting. The second part would be a call for public hearing on the text amendment proposal to add section 42-250(c)34 allowing pet grooming and boarding facilities as a conditional use in the BC-1 district with certain conditions. The public hearing would be should be scheduled for the July 2<sup>nd</sup> Town Council meeting. And the third part is a call for a public hearing for a conditional use permit to renovate the existing buildings on the former "Sea Me Grow" day care property at 108 West Sibbern Drive for the use of a pet grooming and boarding facility. Public**

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**Hearing would be scheduled for the July 2<sup>nd</sup> Town Council meeting. Councilwoman Klutz provided a second and it passed unanimously, 5-0.**

**11. UNFINISHED BUSINESS**

**a.) Further Consideration of Request for Beach Access at 4408 Virginia Dare Trail**

Councilwoman Klutz said after reading the license agreement drawn up by the attorney she thought about the reason why the access had been fenced off. The purpose was to stop the foot traffic over the dune which was disturbing the vegetation and that vegetation helps protect the properties and the road. Once the area was closed there were some consequences to property owners on the west side of the highway whose properties became a little less desirable for rental because of an extended walk required to get to the accesses to the beach.

Mr. Gallagher has come forward and offered to build a walkover which is consistent with CAMA regulations and environmentally feasible for protecting the dune and at the same time promoting public safety in terms of shortening the walk to the beach for pedestrians.

The license agreement seems complex with what is required from both the town and the Gallagher's in terms of maintenance, agreements, signage and suggested the town graciously accept the gift of a walkover and not have to try to execute the license agreement. It would be treated like any other public access the town has. It would also solve the owner's problem of insuring the walkover; simplify matters for them as well as the town.

Councilwoman Klutz recommended coming up with some sort of legal agreement which would allow the owners who are interested in providing this amenity for the town to build it and the town accept it as a donation

Councilman Bateman asked Mr. Gallagher what he thought of this idea and he replied he liked this simpler approach to achieve the same objective.

Mayor Perry added once completed there would no longer be any obligation to each other. If it is torn up the council may or may not decide to rebuild it depending on what the conditions are.

Mr. Gallagher said he hoped if the walkover was torn up the town and there were budget issues the town would call them to see if they wanted to chip in.

MPT Perry agreed with this proposal and said he has learned if the town owns it and grant money is not used to build it, the town can make a decision what to do with it if it is no longer needed or torn up. If it is part of a grant they expect it to be maintained in perpetuity and it can become a real issue for the town to deal with. In this particular case the Gallagher's will build it, give it to the town, and the council can do whatever is necessary in an appropriate fashion when the time is necessary. This is a win win.



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Councilwoman Klutz asked about any tax benefits the Gallagher's might receive and voting on accepting the donation.

Attorney Michael said council would vote on accepting the donation and the walkover would have a value based on the construction costs. The Gallagher's will need to consult with their accountant.

Mayor Perry suggested if he is building it for the town and giving it to the town the town would not charge him for a building permit. Council concurred.

Mr. Gallagher thanked council.

Mayor Perry asked for a motion and if there is an agreement from the attorney then it can be voted on during one of the upcoming meetings.

**Councilwoman Klutz made a motion that Mr. Gerry Gallagher be allowed to construct a beach crossover on the town owned property across from 4408 Virginia Dare Trail with the intention of donating the finished beach walkover to the Town of Kitty Hawk. Also the town manager will provide the legal document which would execute the intent of this motion. Councilman Reid seconded it and the motion passed unanimously, 5-0.**

**12. NEW BUSINESS**

**a.) Appointments to Planning Board, Board of Adjustment, and Recreation Committee**

Noting that some of the volunteers have been on the list a long time, MPT Perry asked if they had been contacted about serving. Clerk Morris replied they had not.

MPT Perry then noted some of the board members currently serving have been here for quite some time and suggested council think about whether that is a good policy or not. That said it does not mean the current people have not been doing a good job. They have been diligent. Their discussion in the minutes is pretty comprehensive.

**Planning Board**

**MPT Perry made a motion to nominate Oscar Northen and Dick Fagan to continue serving for a regular term of office expiring in 2014. Mayor Perry noted Oscar Northen's term is up this June and his chair is up also. MPT Perry said he was going to do the chair separate. Councilwoman Klutz said John Richeson's term is also ending and MPT Perry asked that Alternate John Richeson be added to the motion. There are three people to consider and they would all expire on June 30, 2014. This is regular terms not chair, vice-chair. Councilman Bateman seconded and it passed unanimously, 5-0.**

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MPT Perry said next is a one year term of office for chairman and vice-chairman and nominated Oscar Northen for Chair and Craig Garriss for Vice-Chair and the new terms would end on June 2013. Councilman Bateman seconded and it passed unanimously, 5-0.

**Board of Adjustment**

MPT Perry said there are three regular terms of office expiring 6/30/12: Matt Spencer, Pat Forrester, Jim Geraghty and one alternate Chris Jenkins. This is for Board of Adjustment three year terms. New term will end June 2015. **He then moved for those people to be nominated for those positions. Councilwoman Klutz seconded and it passed unanimously, 5-0.**

**Recreation Committee**

**Councilwoman Klutz moved to reappoint Christine Buckner, Dusty Rhodes, and Rita Phillis to four year terms on the Recreation Committee to end in June 2016. MPT Perry seconded the motion and it passed unanimously, 5-0.**

**13. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER**

**a.) Information Concerning Charter Cable Service in other Communities.** Manager Stockton said at the last meeting council asked what type of experiences the other towns on the Outer Banks had with Charter Cable service. After asking he found that Southern Shores has outages from time to time; Manteo does not have any problems with the service but they do have problems with cables running on top of the ground; Duck reported they had no problem; Nags Head said they had not recently had any problems but they did have problems with them in the past; Kill Devil Hills indicated they did not have any problems recently; and, Dare County said they have not had any problems recently but they did have problems in the past.

**b.) Receipt of Title to Property at 4109 Virginia Dare Trail.** Manager Stockton reported the town has received title to property at 4109 Virginia Dare Trail that was donated to the town.

**c.) Note of Appreciation from Corolla Fire Department.** Manager Stockton mentioned the town has received note from Barry Richmond, president of Corolla Fire and Rescue Squad, complimenting the Kitty Hawk Fire Department for their effective and professional support provided to them during the recent Pine Island conflagration on April 14<sup>th</sup> and 15<sup>th</sup>, 2012.

**d.) Proposed FY 12-13 Budget (Filed with Town Clerk and Copies Distributed to Council).** Manager Stockton announced that per the budget development calendar the draft budget has been filed with the town clerk and copies of the proposed budget has been issued to members of council.

**e.) Status of CAMA Grants for E. Kitty Hawk Road and Lillian Street.** Manager Stockton reported Planning Director Heard had recently spoken with a representative from CAMA

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concerning the status of the applications for grants for the two beach accesses. He was informed the funding recommendations are currently being reviewed by the division director for DCM.

**14. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY**

Attorney Michael reported he sent a letter to Charter and asking them for certain things and for a local telephone number and contact name. To date nothing has been received back.

**15. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL**

**731 West Kitty Hawk Road**

MPT Perry said it is his understanding the Overton property at 731 West Kitty Hawk Road no longer has an owner and the nearest next of kin does not want anything to do with it. Mr. Overton passed away intestate meaning he did not have a will. The problem is there is a trash heap on the property that is more than a public nuisance. What, if anything, can the town do to alleviate at least that type of problem while this goes through the court system?

Attorney Michael replied typically if it constitutes a public nuisance and risks to the health in that there are vermin living in it or likely to live in it or if it is a fire hazard or some danger then the town can work pretty quickly under the nuisance statutes to remove that hazard.

Mayor Perry said he had talked to the person who is supposedly the only relative and he wants nothing to do with the property. If the town wanted to remove the outside stuff he thought the relative would say it is fine. And he does not care what happens to the property. There is tax lien on the property from the town and the county when the town cleaned it up a few years back. He asked for staff to work with Dare County Manager Bobby Outten to try and figure how this property can be settled.

Attorney Michael asked for the relative's name and telephone number and he may be able to resolve it easily.

MPT Perry asked if council is in agreement for the town to pursue this. For the benefit of the town and certainly the neighbors that have lived a lifetime beside this mess, something needs to be done as fast as possible. Council concurred.

**Kayak Launch at Bob Perry Road Boat Ramp**

Mayor Perry said he thought public works was going to fix the launch and now understands the county removed it. It is presenting a problem again and staff needs to pursue getting that kayak launch back in operation as soon as possible.

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PWD Midgett said he spoke with Jenny Gray Jones with Dare County last week and asked her about the launch. She said at this time, due to the budget, they have no intentions of putting it back.

Mayor Perry said there is no choice but to do something and asked if the county still has the launch.

PWD Midgett replied they do not.

Mayor Perry asked the manager to look into this matter.

**Recycling Center**

Mayor Perry asked council if they are in agreement that the town should not accept construction and debris from non-residents since the town now has to pay for it.

MPT Perry said if the town has to pay we should not be required to accept it. On the other hand it is county owned property. If C&D is carried to Stumpy Point they will take it for free. It is just a matter of the county manager and the town manager getting together and working it out. It is county owned property, taxpayers are paying for it, and they should have a place to put it. It keeps stuff out of the marsh and out of the woods.

Councilwoman Klutz thought the town should not be charged or everybody should be charged in the other municipalities that use it.

Mayor Perry suggested the manager work with the county manager on this issue.

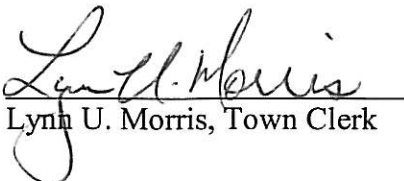
**16. PUBLIC COMMENT**

There was no public comment.

**17. RECESS** to Monday, June 11, 2012, 9:00 AM for FY 12-13 Budget Workshop

Mayor Perry said council needs to recess until Monday, June 11, 2012, at 9:00 a.m. at the Kitty Hawk Town Hall for a budget workshop and **MPT Perry said "so move." Councilwoman Klutz seconded the motion and it passed unanimously, 5-0.** Time was 7:15 p.m.

These minutes were approved at the *July 2, 2012* council meeting.

  
Lynn U. Morris, Town Clerk

  
Clifton G. Perry, Mayor